

**LEGISLATIVE SERVICES AGENCY
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FISCAL IMPACT STATEMENT

LS 6186

BILL NUMBER: SB 90

NOTE PREPARED: Nov 19, 2003

BILL AMENDED:

SUBJECT: Death Penalty.

FIRST AUTHOR: Sen. Bowser

FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: X GENERAL
DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: This bill prohibits imposition of the death penalty if the jury deadlocks at the sentencing hearing, and permits life imprisonment without parole following a jury deadlock only if the jury finds the existence of at least one aggravating circumstance and indicates this finding on a special verdict form.

Effective Date: July 1, 2004.

Explanation of State Expenditures: There are three general stages of review of criminal cases at the state and federal level: direct appeal and post conviction relief at the state level and habeas corpus at the federal level. The Office of the Attorney General represents the state in all three stages of review in death penalty cases, and in direct appeal and habeas corpus if a determinate sentence is imposed. The Office of the State Public Defender represents convicted offenders requesting indigent counsel in post conviction relief.

The following costs were used to compare the costs between these sentencing options:

State Agency	Function	Death Penalty Trial	Life Without Parole
State Public Defender	Represents convicted offenders requesting indigent counsel in post conviction relief	\$191,182	\$3,724
Office of the Attorney General	Represents the state in all three stages of review in death penalty cases	\$72,503	\$12,004
Department of Correction	Execution costs and annual per diem and medical costs	\$20,588 for execution	annual per diem and medical costs
State Police	Security and appeals at execution	\$4,012	

The following shows the stages of review once the death penalty trial has been completed.

Review Level	Court of Review	Issues Permitted To Be Raised
Direct Appeal	State Supreme Court	Defendant required to show that what happened at trial was legally erroneous. Defendant may not present new evidence.
Post Conviction Relief (PCR)	Trial Court	Newly discovered evidence such as DNA and other issues may be presented.
Subsequent Appeal of PCR	State Supreme Court	Decides on the evidence presented at the PCR review.
Federal Habeas Corpus Review	Seventh Circuit Court of Appeals	Federal courts may not grant relief if the claim was waived in the state court or if the issue was not presented or properly presented in state court.

In the following analysis, LSA staff compared the costs that the state assumes for the direct appeal, post relief conviction, and federal habeas corpus review. ***It does not consider the costs that the state incurs for half of the costs of criminal defense during the actual trial that it shares with the counties.*** (The average age of 84 offenders who were sentenced to death was 30 at the time when a request for a death penalty was made against them.)

Staff assumed an offender would spend an average period of 14 years on death row before being executed if the death penalty was imposed and 32.5 years if an offender is sentenced to 65 years in prison. (Most offenders reduce their sentences by one day for each day that they comply with prison facility codes of behavior.)

Offenders sentenced to life without parole were assumed to remain in DOC facilities until the age of 77. Because these costs occur at different points in time, a net present value was prepared for each cost stream assuming an annual inflation rate of 5.2%. The following table presents these costs.

Post Trial Costs to the State of Sentencing Options for a 30-Year-Old Offender Sentenced for Aggravated Murder		
<u>Sentence</u>	<u>Number of Years of Incarceration</u>	<u>Net Present Value</u>
Death Penalty	14	\$456,744
Life Without Parole	47	\$509,739
65 Years with 50% Credit Time	32.5	\$459,941

See also *Explanation of Local Expenditures*.

Explanation of State Revenues:

Explanation of Local Expenditures: Since it is assumed that the death penalty trial has already been completed, the costs of a jury trial would already have been incurred by the county. However, because counties are responsible for half of the costs of the attorneys fees for direct appeal hearings, counties could avoid significantly higher costs of providing attorneys to represent offenders who have filed direct appeals after the initial decision was made.

The average cost of the direct appeals for ten death row defendants was \$54,000, while the average cost of the direct appeals for eight offenders who received a sentence of life imprisonment without parole was \$5,400.

Explanation of Local Revenues:

State Agencies Affected: Department of Correction, Office of the Attorney General, Office of the State Public Defender, State Police.

Local Agencies Affected: Trial Courts, County Sheriff.

Information Sources: Indiana Supreme Court; *The Application of Indiana's Capital Sentencing Law, Findings of the Indiana Criminal Law Study Commission*, January 2002; Website of Clark County (IN) Prosecuting Attorney, <http://www.clarkprosecutor.org/html/death/>

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